



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201301015**
Release Date: 1/4/2013
Date: October 10, 2012

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List:

4941.00-00
4941.04-00
4946.01-00

Legend:

City 1 =
City 2 =
Ranch =
Founder =
Management Company =
Family =

Dear

We have considered your ruling request dated December 1, 2008 concerning the federal income and excise tax consequences under § 4941 of the Internal Revenue Code (Code) of the proposed transactions as described below.

Facts

You have been recognized as an organization exempt under § 501(c)(3) of the Code and are classified as a private foundation within the meaning of § 509(a) as a private non-operating foundation. You were formed to make grants to other charitable organizations consistent with your exempt purposes. You derive your income from a portfolio of stocks, bonds, and substantial holdings of investment real property located in City 1 and City 2. The real property is adjacent to property owned by the Ranch, a limited liability company, and a disqualified person as described below. The majority of these assets were acquired either by gift from Founder during his lifetime or as bequests under his will.

The Ranch acts as a common parent of the entities which own the City 1 real property and most other real property assets. The Ranch is owned directly and indirectly by the descendants of Founder or through other trusts for the benefit of such descendants.

You own certain real property in downtown City 1 adjacent to property owned by the Ranch. You are interested in developing your properties to maximize the return on your assets. However, because of the urban setting, the lots are small, and in many cases any commercially reasonable development project would have to use adjacent properties owned by the Ranch. You propose to construct a multi-tenant building that would lease retail space to independent

third parties. The building would be constructed entirely on your land. However, the proposed site has insufficient space for parking required for a commercially reasonable operation. Therefore, the Ranch would commit to lease certain paved property it owns adjacent to the building site to the tenants of your building for parking space. There will be no agreement to offer any kind of rent concession to the tenants of your building or any other type concession or perk and the fee charged by the Ranch to your tenants will be fair market value of parking in downtown City 1. The tenants in your building are otherwise unrelated to you, Ranch or any of your disqualified persons.

You would also like to lease parking space on your land to tenants of the Ranch. You have constructed a three level parking structure on your land to accommodate your own tenants and to comply with zoning regulations. The number of parking spaces available in the parking structure is more than necessary to meet the parking needs of your tenants. You would like to lease the excess spaces to the general public, including tenants of nearby developments owned by the Ranch. If you enter into a lease with a Ranch tenant, the lease would be solely between you and the Ranch tenant. You will charge the Ranch's tenants and the general public the fair market value for the parking space. You also represent that there is no agreement to offer any kind of concession to the tenants of Ranch or any other type concession or benefit. There would be no direct transaction between you and Ranch. The tenants in Ranch's building are otherwise unrelated to Ranch, you or any of your disqualified persons.

The real property owned by you and real property owned by the Ranch are interspersed in such way that the parking spaces owned by you are more proximate to Ranch property and vice versa.

RULINGS REQUESTED

You have requested rulings that the following activities will not constitute self-dealing within the meaning of § 4941 of the Code:

1. Lease of parking spaces in Ranch-owned property by your tenants at fair market value rates so long as your tenants are not accorded preferential treatment over the general public.
2. Lease of parking spaces in your multi-tenant parking facility to tenants of Ranch-owned properties at fair market value rates so long as Ranch tenants are not accorded preferential treatment over the general public.

LAW

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code provides, in part, that the term "self-dealing" means any direct or indirect (A) sale or exchange, or leasing, of property between a private foundation and a

disqualified person; . . . (E) transfer to, or use by or for the benefit of, a disqualified person of the assets of a private foundation.

Section 4941(d)(2)(E) of the Code provides in part that "payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of a private foundation shall not be an act of self-dealing if the compensation for payment or reimbursement is not excessive."

Section 4946(a)(1) of the Code provides, in part, that the term "disqualified person" means, with respect to a private foundation, a person who is --

- A. a substantial contributor to the foundation;
- B. a foundation manager;
- C. an owner of more than 20 percent of (i) the total combined voting power of a corporation . . . which is a substantial contributor to the foundation. . . ;
- D. a member of the family of any individual described in subparagraphs (A), (B), or (C);
- E. a corporation in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power.

Section 507(d)(2)(A) of the Code defines a substantial contributor as any person who contributed or bequeathed an aggregated amount of more than \$5,000 to a private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

Section 53.4941(d)-1 of the Foundation and Similar Excise Taxes Regulations ("foundation regulations") defines self-dealing in general as any direct or indirect transaction described in § 53.4941(d)-2. For the purposes of this section, it is immaterial whether the transaction results in a benefit or a detriment to the private foundation.

Section 53.4941(d)-2(b)(2) of the foundation regulations provides, in part, that "the leasing of property between a disqualified person and a private foundation shall constitute an act of self-dealing."

Section 53.4941(d)-2(d)(1) of the foundation regulations provides that in part, the furnishing of facilities such as a parking lot between a private foundation and a disqualified person shall constitute an act of self-dealing.

Section 53.4941(d)-2(e) of the foundation regulations provides, in part, that the payment of

compensation by a private foundation to a disqualified person shall constitute an act of self-dealing . . .

Section 53.4941(d)-2(f) of the foundation regulations provides that in general. The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing.

Section 53.4941(d)-2(f)(2) of the foundation regulations provides, in part, that The fact that a disqualified person receives an incidental benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing . . .

Section 53.4941(d)-3(c)(1) of the foundation regulations provides, in part, that the payment of compensation by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purposes of the private foundation shall not be an act of self-dealing if such compensation is not excessive . . . The term personal services includes the services of a broker serving as an agent for the private foundation, but not the services of a dealer who buys from the private foundation and sells to third parties.

Section 53.4941(d)-3(c)(2) of the foundation regulations, in example 2, provides the following example of permitted personal services:

"C, a manager of private foundation X, owns an investment counseling business. Acting in his capacity as an investment counselor, C manages X's investment portfolio for which he receives an amount which is determined to be not excessive. The payment of such compensation to C shall not constitute an act of self-dealing."

ANALYSIS

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Under § 4946 (a)(1)(A), a disqualified person for the purpose of § 4941 means, with respect to a private foundation, a person who is a substantial contributor to the foundation, a foundation manager, an owner of more than 20 percent of (i) the total combined voting power of a corporation which is a substantial contributor to the foundation; a member of the family of any individual described in above, a corporation in which persons described in above or own more than 35 percent of the total combined voting power. Section 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregated amount of more than \$5,000 to a private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. The Ranch and Management Company are both owned 100 percent, directly and indirectly, by descendants of Founder. Founder contributed and bequeathed to you a majority of your assets. Founder is a substantial contributor under §

4946(a)(1)(A). Therefore, since the Ranch and Management Company are both owned more than 35 percent by family members of a substantial contributor of you, both are disqualified persons with respect to you within the meaning of § 4946(a)(1)(E).

You propose to build a multi-tenant commercial building entirely on your property. The units in the building will be leased to third-party tenants, none of whom have any other connection with you or any disqualified persons. The site has insufficient space for the required parking for the buildings tenants. Therefore, it is anticipated that the Ranch, a disqualified person with respect to you, would commit to lease certain paved property it owns adjacent to your building to the tenants of your building for parking. There will not be any lease, other agreement or transaction between the you and the Ranch, the third-party tenants of your building will enter into a separate parking space agreement with the Ranch. There will be no rent concession offered by either you or Ranch and your tenants will be charged the fair market value for the parking space. The tenants are not disqualified persons with respect to you. Therefore, the leasing of parking spaces to your tenants by the Ranch as proposed will not constitute an act of self-dealing under § 4941 because there is no disqualified person involved in a transaction with the private foundation.

You propose to lease excess parking spaces in a garage you own to the general public and tenants of the Ranch. You will enter into a parking lease agreement directly with a tenant of the Ranch's building. Parking in your lot is available to the general public on a first come, first served basis including the tenants of the Ranch. There would be no transaction between you and the Ranch. You will charge Ranch's tenants fair market value for the lease of a parking space and both Ranch tenants and Ranch will not receive any preferential treatment or benefit. You also represent that Ranch will not give its tenants who lease space in your building any preferential treatment or benefit. Section 53.4941(d)-2(f) provides that in general, the use by or for the benefit of, a disqualified person of the assets of a private foundation shall constitute an act of self-dealing. The tenants of the Ranch are not disqualified persons with respect to you, because they do not come within any of the definitions set forth in § 4946. The Ranch's tenants will be benefitting from the use of your asset, the parking garage not the Ranch. In addition, you and the Ranch will not directly or indirectly enter into a lease agreement for the use of the parking spaces by your tenants. Therefore, the lease of parking spaces in your multi-tenant parking facility to unrelated tenants of Ranch owned properties at fair market value rates on a first come first serve basis with no preferential treatment given to Ranch or one of its tenants will not constitute an act of self-dealing under § 4941 because the tenants are not disqualified persons.

RULINGS

Based on the information and representations submitted we are ruling as follows:

1. Lease of parking spaces in Ranch-owned property by your tenants at fair market value rates so long as your tenants are not accorded preferential treatment over the general public

and who are otherwise unrelated to Ranch and or you as described above will not be an act of self-dealing under § 4941 of the Code.

2. Lease of parking spaces in your multi-tenant parking facility to tenants of Ranch owned properties at fair market value rates so long as Ranch tenants are not accorded preferential treatment over the general public and who are otherwise unrelated to Ranch and or you as described above will not be an act of self-dealing under § 4941 of the Code.

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437